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FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE

Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Communications Assistance for)	CC Docket No. 97-213
Law Enforcement Act)	
)	
Public Notice: Comment Sought on)	DA 99-863
CALEA Revenue Estimates of Five)	
Manufacturers)	

To: Chief, Office of Engineering and Technology

**COMMENTS OF
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo") hereby submits comments in response to the above-captioned Public Notice.¹ Although the aggregated cost estimates set forth in the Public Notice have inherent and fundamental limitations, as the Public Notice acknowledges, they nevertheless indicate the magnitude of the cost of CALEA implementation. Despite the limitations of this data, and consistent with estimates in comments filed in the proceeding, the aggregate data establish that the FBI's "punch list" will cost many hundreds of millions of dollars, is not cost-effective, and must be rejected as contrary to CALEA statutory requirements.

¹ Public Notice, *Comments Sought on CALEA Revenue Estimates of Five Manufacturers*, CC Docket No. 97-213, DA 99-863 (OET May 7, 1999) ("Public Notice").

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Despite the FBI's claim that costs should have only marginal significance in this proceeding,² Congress has made the cost of compliance a critical factor in the Commission's decision whether to impose new or changed requirements on an industry "safe harbor" standard. First, the statute requires the Commission to consider whether any such requirements would be cost effective in meeting Section 103's requirements.³ Second, the Commission must weigh the effect of such requirements on residential subscribers' costs.⁴ Moreover, the Commission must consider costs in deciding whether call-identifying information is "reasonably available" to a carrier.⁵

Even before the Commission issued its Public Notice, the record showed that the cost of implementing the FBI's "punch list" would be very high. The aggregate data simply confirm that fact. The commenters addressing cost issues observed that implementation of the full punch list would cost "hundreds of millions of dollars"⁶ or even more.⁷ One carrier estimated that it would cost \$182 million for just its own implementation of the punch list.⁸ The aggregate figure in the Public Notice of \$414

² See, e.g., DOJ/FBI Petition for Reconsideration, CC Docket 97-213, filed March 31, 1999 (arguing that cost considerations have little or no relevance, while at the same time objecting to Commission's grant of confidentiality for manufacturers' cost data).

³ See CALEA § 107(b)(1), 47 U.S.C. § 1006(b)(3).

⁴ See CALEA § 107(b)(3), 47 U.S.C. § 1006(b)(3).

⁵ See CALEA § 103(a)(2), 47 U.S.C. § 1002(a)(2).

⁶ AirTouch Comments at 14.

⁷ See SBC Comments at 5.

⁸ See BellSouth Comments at 2.

million for punch list implementation thus does serve to confirm the order of magnitude of the cost estimates in the record.

While the aggregate figures in the Public Notice are useful as a “sanity check” for confirming the general range of the CALEA cost estimates, they cannot be used to project the actual cost of punch list implementation.⁹ Indeed, the aggregated revenue estimates understate the total cost by a large margin because, as the Public Notice acknowledges, these estimates omit many costs. For example, the estimates cover only five manufacturers, but other manufacturers will also be developing and selling CALEA solutions and upgrades. In fact, the estimates do not even fully cover the five manufacturers’ CALEA revenues. Some of the estimates do not include equipment costs, which may be very substantial, particularly with respect to wireless carriers’ dialed digit extraction. The estimates also do not include carriers’ internal staffing costs or third-party vendor expenses connected with upgrading to CALEA and punch list compliance.¹⁰ In short, the aggregate \$414 million estimate in the Public Notice should be viewed as much lower than the actual total cost.

⁹ In addition to the fact that the estimates understate the cost of CALEA implementation for the reasons stated below, the aggregate estimates are inherently inaccurate because they are a compilation of data based on varying assumptions. For example, some of the manufacturers’ estimates apparently are based on a national “buy-out” concept, others are not; some include equipment, others do not. Again, and accordingly, the aggregate of these differing estimates is useful only as an indication of the order of magnitude of the cost, and not as a predictor of the actual cost.

¹⁰ Dialed digit extraction would require wireless carriers to install DTMF decoders for the maximum number of lines subject to interception, which has been described as “cost-prohibitive.” *See* AirTouch Comments at 27-28.

Consequently, the Commission now has record evidence that punch list compliance will cost hundreds of millions of dollars and, in all likelihood, greatly exceed the \$414 million in the aggregate estimate. Further, there is *no* record evidence that the cost will be any lower. The FBI has submitted no information on costs, even though it has collected such information from a number of manufacturers. Accordingly, on the record before it, the Commission can only conclude that the punch list will be extraordinarily costly to implement.¹¹

As a result, the Commission cannot find that the punch list is a “cost-effective” way of meeting the requirements of Section 103; nor can it find that the punch list will minimize costs to residential subscribers. Moreover, the use of incomplete aggregate data allows the Commission only to roughly estimate the cost *floor* for the punch list. Making the contrary determination — that the punch list is cost-effective — would require a better record on the costs, with detailed evidence that could be analyzed by the public and relied upon by the Commission. The aggregate data cannot be used for such analysis, for the reasons stated herein.


¹¹ The aggregate figures also indicate that the \$500 million targeted by Congress as needed for reimbursable CALEA compliance would be likely greatly exceeded. This also suggests that the so-called “punch-list” goes beyond Congressional intentions.

CONCLUSION

For the foregoing reasons, PrimeCo respectfully submits that the aggregate cost estimates have limited evidentiary value. However, these estimates *do*: (1) validate the magnitude of the commenters' cost estimates; and (2) demonstrate (by their omissions) that the total actual cost of punch list compliance will exceed \$414 million. As a result, the Commission has record evidence demonstrating that punch list compliance will be extraordinarily costly. The only conclusion permitted by this record is that the so-called "punch list" is not cost-effective and cannot be required under CALEA.

Respectfully submitted,

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May 17, 1999